

1 Jeffrey T. Sprung, WSBA #23607  
 Martha Rodríguez López, WSBA #35466  
 2 Paul Crisalli, WSBA #40681  
 R. July Simpson, WSBA #45869  
 3 Jeffrey C. Grant, WSBA #11046  
*Assistant Attorneys General*  
 4 ROBERT W. FERGUSON  
 ATTORNEY GENERAL  
 5 Washington Attorney General’s Office  
 800 Fifth Avenue, Suite 2000  
 6 Seattle, WA 98104  
 (206) 464-7744

7  
 8 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**  
 9 **AT YAKIMA**

10 STATE OF WASHINGTON,

NO. 2:19-cv-00183-SAB

11 Plaintiff,

JOINT STATUS REPORT  
 ADDRESSING CASE  
 SCHEDULING

12 v.

13 ALEX M. AZAR II, in his official  
 capacity as Secretary of the United  
 States Department of Health and  
 14 Human Services; and UNITED  
 STATES DEPARTMENT OF  
 15 HEALTH AND HUMAN  
 SERVICES,

16 Defendants.  
 17

18 As directed by the Court, Dkt. 28, the parties have met and conferred with  
 19 the goals of (1) exploring whether a viable schedule can be agreed to that would  
 20 permit the legality of the U.S. Department of Health and Human Services’ (HHS)  
 21 Final Rule to be resolved on cross-motions for summary judgment, and (2)  
 22 alternatively, proposing a briefing schedule on Washington’s preliminary

1 injunction motion. The parties present the following schedules for the Court's  
2 consideration.

3 1. Washington filed its motion for preliminary injunction on June 24,  
4 2019, *see* Dkt. 8. On July 8, 2019, the Court entered an Order stipulated to by the  
5 parties that postponed the effective date of the Final Rule pursuant to 5 U.S.C.  
6 § 705 until November 22, 2019, noon PST, vacated the deadlines for briefing and  
7 argument on Washington's motion for preliminary injunction, and held  
8 Washington's motion in abeyance pending further order. Dkt. 28.

9 2. Washington believes that a ruling is necessary either on  
10 Washington's motion for preliminary injunction or the parties' cross-motions for  
11 summary judgment by the effective date of the Final Rule. Washington observes  
12 that the new November 22, 2019 effective date was established unilaterally by  
13 the Defendants, with no input from Washington. If the Court does not have  
14 sufficient time to rule on cross-motions for summary judgment, Washington  
15 desires that its motion for preliminary injunction be reinstated, and it has  
16 proposed a schedule below to achieve this.

17 3. If the Court is amenable to resolving these matters on summary  
18 judgment before the November 22, 2019 effective date of the Final Rule, the  
19 parties propose the following schedule for summary judgment motions and for  
20 Defendants to respond to the complaint:

21  
22

1	July 22, 2019	Defendants produce the administrative record (AR) to Plaintiff and file a certified list of the contents of the AR with the Court.
2		
3	August 19, 2019	Defendants file their motion for summary judgment and file their response to the complaint.
4		
5	September 20, 2019	Plaintiff files a consolidated opposition and cross-motion for summary judgment.
6	October 4, 2019	Defendants file a consolidated opposition and reply.
7		
8	October 18, 2019	Plaintiff files its reply.

9 The parties will thereafter be available for argument on their summary judgment  
10 motions at the Court's convenience.

11 4. This summary judgment briefing schedule assumes that there are no  
12 disputes about the completeness of the AR that Defendants produce on July 22.  
13 If Washington believes the AR is deficient or incomplete, it will promptly meet  
14 and confer with Defendants to determine whether any adjustments to the  
15 summary judgment briefing schedule will be necessary.

16 5. If the Court determines that the foregoing schedule does not provide  
17 the Court sufficient time to rule on cross-motions for summary judgment,  
18 Washington requests that briefing of its preliminary injunction motion proceed  
19 on the following schedule: Defendants will file their opposition by August 2,  
20 2019; Washington will file its reply by August 30, 2019; and the parties will be  
21 available for argument on the motions at the Court's convenience. In Defendants'

22

1 view, a preliminary injunction briefing schedule is unnecessary, but if the Court  
2 elects to enter a preliminary injunction briefing schedule, Defendants propose  
3 that they file their preliminary injunction opposition and dispositive motion by  
4 August 19, 2019, and Washington file its preliminary injunction reply and  
5 opposition to Defendants' dispositive motion by September 20, 2019.

6 6. If the Court is amenable to deciding these cases on summary  
7 judgment prior to November 22, the parties propose that the motion for  
8 preliminary injunction continue to be held in abeyance during the Court's  
9 consideration of the summary judgment motions, in the event Washington  
10 believes immediate provisional relief becomes necessary before the  
11 November 22, 2019 effective date of the Final Rule.

12 RESPECTFULLY SUBMITTED this 12th day of July, 2019.

13 ROBERT W. FERGUSON  
14 Attorney General

15 s/ Jeffrey T. Sprung

16 JEFFREY T. SPRUNG, WSBA #23607  
17 MARTHA RODRÍGUEZ LÓPEZ, WSBA #35466  
18 PAUL CRISALLI, WSBA #40681  
19 R. JULY SIMPSON, WSBA #45869  
20 JEFFREY C. GRANT, WSBA #11046  
21 Assistant Attorneys General  
22 Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-7744  
Jeff.Sprung@atg.wa.gov  
Martha.RodriguezLopez@atg.wa.gov  
Paul.Crisalli@atg.wa.gov  
July.Simpson@atg.wa.gov

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

Jeffrey.Grant@atg.wa.gov  
*Attorneys for Plaintiff State of Washington*

JOSEPH H. HUNT  
Assistant Attorney General

JOSEPH H. HARRINGTON  
United States Attorney

MICHELLE R. BENNETT  
Assistant Branch Director

*s/ Rebecca M. Kopplin*

---

REBECCA M. KOPPLIN  
(California Bar No. 313970)  
BRADLEY P. HUMPHREYS  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, D.C. 20005  
Tel: (202) 514-3953  
Fax: (202) 616-8470  
Email: Rebecca.M.Kopplin@usdoj.gov  
*Counsel for Defendants*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 12th day of July, 2019, at Seattle, Washington.

*s/ Jeffrey T. Sprung*  
\_\_\_\_\_  
JEFFREY T. SPRUNG, WSBA #23607  
Assistant Attorney General